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PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4007

RIN 1212-AB26

Payment of Premiums; Large-Plan Flat-Rate Premium

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: Based on its regulatory review under Executive Order 13563 (Improving Regulation and Regulatory Review), the Pension Benefit Guaranty Corporation (PBGC) is moving the flat-rate premium due date for large plans to later in the premium payment year — to the same date as the variable-rate premium due date for such plans — starting with the 2014 plan year. Thus, large calendar-year plans' 2014 flat-rate premiums will be due October 15, 2014. This action implements part of a PBGC project to make its premium rules more effective and less burdensome by simplifying due dates, coordinating the due date for terminating plans with the termination process, making conforming and clarifying changes to the variable-rate premium rules, providing for relief from penalties, and making other changes. The rest of the project will be implemented by a separate final rule.

DATES: Effective [INSERT THE DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Applicable to plan years that begin on or after January 1, 2014.

FOR FURTHER INFORMATION CONTACT: Catherine B. Klion, Assistant General Counsel for Regulatory Affairs (klion.catherine@pbgc.gov), or Deborah C. Murphy, Deputy

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SUPPLEMENTARY INFORMATION:

Executive Summary — Purpose of the Regulatory Action

This rulemaking is needed as part of a larger project to make PBGC's premium rules more effective and less burdensome. The rule contributes to the simplification and streamlining of due dates by making the flat-rate premium due date for large plans the same as the variable-rate premium due date for such plans.

PBGC's legal authority for this action comes from section 4002(b)(3) of the Employee Retirement Income Security Act of 1974 (ERISA), which authorizes PBGC to issue regulations to carry out the purposes of title IV of ERISA, and section 4007 of ERISA, which gives PBGC authority to set premium due dates and to assess late payment penalties.

Executive Summary — Major Provisions of the Regulatory Action

In recent years, premium due dates have depended on size of plan and type of premium. Large plans have paid the flat-rate premium early in the premium payment year and the variable-rate premium later in the year. Mid-size plans have paid both the flat- and variable-rate premiums by that same later due date. Small plans have paid the flat- and variable-rate premiums in the following year. On July 23, 2013, PBGC proposed to simplify the due-date rules by providing that all annual premiums for plans of all sizes will be due on the same day in the premium payment year — the historical variable-rate premium due date. As part of that

simplification process, this rule eliminates the separate due date for the flat-rate premiums of large plans beginning with the 2014 plan year.

Background

PBGC administers the pension plan termination insurance program under title IV of the Employee Retirement Income Security Act of 1974 (ERISA). Under ERISA sections 4006 and 4007, plans covered by the program must pay premiums to PBGC. PBGC's premium regulations — on Premium Rates (29 CFR part 4006) and on Payment of Premiums (29 CFR part 4007) — implement ERISA sections 4006 and 4007.

There are two kinds of annual premiums.¹ The flat-rate premium is based on the number of plan participants, determined as of the participant count date. The participant count date is generally the last day of the plan year preceding the premium payment year; in some cases, however (such as for plans that are new or are involved in certain mergers or spinoffs), the participant count date is the first day of the premium payment year. The variable-rate premium (which applies only to single-employer plans) is based on a plan's unfunded vested benefits (UVBs) — the excess of its premium funding target over its assets.

Section 4007 of ERISA authorizes PBGC to set premium due dates and assess penalties for failure to pay premiums timely. Beginning in 1999,² PBGC set the variable-rate premium due date for plans of all sizes as 9½ calendar months after the beginning of the premium payment year (October 15 for calendar-year plans). This was done so that the due date would correspond with the extended due date for the annual report for the prior year that is filed on Form 5500. Coordination of the premium and Form 5500 due dates promotes consistency and simplicity and

¹ There is also a termination premium, which is unaffected by this final rule.

² See PBGC final rule at 63 FR 68684 (Dec. 14, 1998).

avoids confusion and administrative burden. In 2008, however, to conform to changes made by the Pension Protection Act of 2006 (PPA 2006), small-plan due dates were extended to 16 months after the beginning of the premium payment year (April 30 of the following year for calendar-year plans).

Most plans' flat-rate premiums have been due at the same time as variable-rate premiums. However, flat-rate premiums for large plans (those with 500 or more participants) are due two calendar months after the beginning of the premium payment year (the end of February for calendar-year plans).³ Because of the impracticality of counting participants so soon after the participant count date, the premium payment regulation provides an elaborate system of safe harbors from late-payment penalties for estimated large-plan flat-rate premiums, and the practice of most large plans has been to pay an estimate of the flat-rate premium at the early due date and "true up" when they pay the variable-rate premium later in the year.

Proposed Rule

On January 18, 2011, the President issued Executive Order 13563, "Improving Regulation and Regulatory Review," to ensure that Federal regulations seek more affordable, less intrusive means to achieve policy goals, and that agencies give careful consideration to the benefits and costs of those regulations. In response to and in support of the Executive Order, PBGC on August 23, 2011, promulgated its Plan for Regulatory Review,⁴ noting several regulatory areas — including premiums — for immediate review.

³ This requirement was adopted in response to a recommendation in the 1984 report of the Grace Commission (the President's Private Sector Survey on Cost Control). See PBGC final rule at 50 FR 12533 (Mar. 29, 1985). The requirement was effective for 1985 for very large plans (those with 10,000 or more participants) and for 1986 for all other large plans.

⁴ See <http://www.pbgc.gov/documents/plan-for-regulatory-review.pdf>.

PBGC reviewed its premium regulations and identified a number of ways to simplify and clarify the regulations, reduce burden, provide penalty relief, and generally make the regulations work better. On July 23, 2013 (at 78 FR 44056), PBGC published a proposed rule to replace the system of three premium due dates (based on plan size and premium type) with a single due date corresponding to the Form 5500 extended due date, to coordinate the due date for terminating plans with the termination process, to make conforming and clarifying changes to the variable-rate premium rules, to provide for relief from penalties, and to make other changes. Under the proposal, large plans would no longer have to pay flat-rate premiums early and small plans would have the same due dates as other plans but get more time to value benefits.

PBGC received comments from six commenters — two employer associations, two associations of pension practitioners, an actuarial firm, and an individual actuary. All of the commenters approved of the proposal, and one specifically urged that it be made effective for 2014. The commenters also had suggestions for additional changes PBGC might make in its premium regulations or procedures. None of those suggestions dealt with the large-plan flat-rate premium due date.

The first large-plan flat-rate filing deadline for 2014 is February 28, 2014. Thus the provision of the proposed rule setting the flat-rate premium due date for large plans later in the year — on the same date as the variable-rate premium due date for such plans — is by far the most time-sensitive aspect of the proposal. For that reason, and in light of the fact that this provision generated only positive comments, PBGC is finalizing this one change separately and ahead of the other changes in the proposal.

PBGC expects to deal with all other aspects of the July 23 proposal in a separate final rule to be issued in time to provide all plans with adequate advance guidance for timely

compliance with the new procedures in 2014. If the situation changes, PBGC will advise the public as appropriate.

Regulatory Changes Made By This Final Rule

This final rule makes the flat-rate premium due date for large plans the same as their variable-rate due date. For calendar-year plans, that due date will be October 15.⁵

For many large plans, making the flat-rate premium due when the variable-rate premium is due will cut the number of premium transactions with PBGC by two, rather than just one. That is because underestimating the flat-rate premium has typically given rise not only to penalties (which are often waived) but also to interest charges (which cannot be waived). Thus, after paying an estimate of the flat-rate premium, and then paying the balance due, a large plan has usually had to make yet another payment, of the interest on the amount by which its initial estimated payment fell short of the correct amount. Eliminating the need for flat-rate premium estimates will eliminate interest payments on shortfalls in those estimates.

The due date change will mean that plan consultants can do all of a plan's premium filing work at one time, once a year. PBGC will receive one premium filing for each plan each year and will be able to process a plan's entire annual premium in a single operation. Reducing the number of due dates will be simpler for all concerned. Less complexity means less chance for mistakes and the time and expense of correcting them. Moving to a single due date will also simplify PBGC's premium processing systems and save PBGC money on future periodic changes to those systems (because it is less expensive to modify simpler systems).

⁵ To conform to this change in the large-plan flat-rate premium due date, which makes unnecessary the penalty safe harbors for under-estimates of large plans' flat-rate premiums, this final rule eliminates those safe harbor provisions from the premium payment regulation.

In short, PBGC believes that this change in the large-plan flat-rate premium due date will produce a significant reduction in administrative burden for both plans and PBGC.

Executive Orders 12866 and 13563

PBGC has determined, in consultation with the Office of Management and Budget, that this rulemaking is a “significant regulatory action” under Executive Order 12866. The Office of Management and Budget has therefore reviewed this rule under Executive Order 12866.

Executive Orders 12866 and 13563 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This final rule is associated with retrospective review and analysis in PBGC’s Plan for Regulatory Review issued in accordance with Executive Order 13563.

Executive Orders 12866 and 13563 require that a comprehensive regulatory impact analysis be performed for any economically significant regulatory action, which, under Section 3(f)(1) of Executive Order 12866, is one that “is likely to result in a rule that may . . . [h]ave an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.”

PBGC premium payments are included as receipts in the Federal budget, and the large-plan flat-rate premium deferral will cause a one-time shift of about \$1.5 billion (attributable primarily to calendar year plans) from one fiscal year to the next. Although no premium revenue will be lost, there will be the appearance of a one-time loss for the year when the due dates

change, and PBGC has therefore determined that this final rule is economically significant under the criteria in Executive Order 12866.

The estimate of the amount of flat-rate premium shifted from one fiscal year to the next, and the estimate (below) of the amount of interest shifted from PBGC to plans, are revised from the estimates in the proposed rule to reflect projected 2014 per-participant flat premium rates (\$49 (instead of \$35) for single-employer plans and \$12 (instead of \$9) for multiemployer plans) and the following participant-count data for large plans for plan years beginning in 2012 (instead of 2010):

	Approximate number of participants in large plans (millions)	
	All large plans	Large plans whose flat-rate premium shifts to the next fiscal year
Single-employer	30	28
Multiemployer	10	9

In accordance with OMB Circular A-4, PBGC has examined the economic and policy implications of this final rule and has concluded that the action's benefits justify its costs. That conclusion is based on the following analysis of the impact of the due date change.

The due date change will shift, from PBGC to plans, the earnings on premium payments by large plans for the 7½ months between the old and new due dates. PBGC estimates that the average gain per large plan will be about \$11,300 per year. To put this figure in perspective, large plans pay over \$1 billion in flat-rate premiums — about 95 percent of PBGC's flat-rate premium income.

Because earning rates differ between PBGC and plans, PBGC's loss will be about one-third as much as plans' gain. PBGC estimates its rate of return, from investment in U.S.

Government securities, at about 2 percent. PBGC estimates plans' rate of return at 6 percent.

The following table shows the estimated average interest earnings calculated with four rates: two percent (PBGC's best estimate for PBGC's rate of return), six percent (PBGC's best estimate for plans' rate of return), and three and seven percent (the discount rates recommended by OMB Circular A-4).

Approximate average interest earnings per large plan at —			
2 percent	3 percent	6 percent	7 percent
\$3,800	\$5,600	\$11,300	\$13,200

In addition, PBGC estimates that the reduction in large plans' administrative burden attributable to the change in their flat-rate premium due date will translate into average annual savings of 3 hours per plan. (PBGC arrived at this estimate on the basis of inquiries made to pension practitioners.) The dollar equivalent of this saving is about \$1,050.⁶

Accordingly, PBGC foresees an average net benefit (in dollar terms) from adoption of the new uniform due date of about \$12,350 for each large plan (about \$11,300 in saved interest plus about \$1,050 in saved administrative expenses).

Immediate Effective Date

Pursuant to section 553(d)(3) of the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and section 808(2) of the Congressional Review Act (5 U.S.C. 801 *et seq.*), PBGC for good cause finds that notice and public procedure on this final rule are unnecessary and contrary to the public interest and that this final rule should be effective upon publication. The project as a whole, including the relief provided by this final rule, has received only positive comment from the public. This rule requires no affirmative action by the regulated community. On the

⁶ PBGC assumes for this purpose that enrolled actuaries charge about \$350 per hour.

contrary, it provides relief from the restrictive large-plan flat-rate early-filing requirement for PBGC premiums (see section 553(d)(1) of the Administrative Procedure Act). The first large-plan flat-rate filing deadline for 2014 is February 28, 2014. To ensure that all large plans will be able to rely on this final rule for the 2014 plan year, PBGC is making this rule effective upon publication.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) imposes certain requirements with respect to rules that are subject to the notice and comment requirements of section 553(b) of the Administrative Procedure Act. Unless an agency determines that a final rule is not likely to have a significant economic impact on a substantial number of small entities, section 604 of the Regulatory Flexibility Act requires that the agency present a final regulatory flexibility analysis at the time of the publication of the final rule describing the impact of the rule on small entities and steps taken to minimize the impact. Small entities include small businesses, organizations and governmental jurisdictions.

Small entities

For purposes of the Regulatory Flexibility Act requirements with respect to this final rule, PBGC considers a small entity to be a plan with fewer than 100 participants. This is consistent with certain requirements in title I of ERISA⁷ and the Internal Revenue Code,⁸ as well as the definition of a small entity that the Department of Labor (DOL) has used for purposes of the

⁷ See, *e.g.*, ERISA section 104(a)(2), which permits the Secretary of Labor to prescribe simplified annual reports for pension plans that cover fewer than 100 participants.

⁸ See, *e.g.*, Code section 430(g)(2)(B), which permits plans with 100 or fewer participants to use valuation dates other than the first day of the plan year.

Regulatory Flexibility Act.⁹ Using this proposed definition, about 64 percent (16,500 of 25,600) of plans covered by title IV of ERISA in 2011 were small plans.¹⁰

Further, while some large employers may have small plans, in general most small plans are maintained by small employers. Thus, PBGC believes that assessing the impact of the rule on small plans is an appropriate substitute for evaluating the effect on small entities. The definition of small entity considered appropriate for this purpose differs, however, from a definition of small business based on size standards promulgated by the Small Business Administration (13 CFR 121.201) pursuant to the Small Business Act. In its proposed rule, therefore, PBGC requested comments on the appropriateness of the size standard used in evaluating the impact of the proposed rule on small entities. No comments were received on this issue.

Certification

On the basis of its definition of small entity, PBGC certifies under section 605(b) of the Regulatory Flexibility Act that the amendments in this final rule will not have a significant economic impact on a substantial number of small entities. Accordingly, as provided in section 605 of the Regulatory Flexibility Act, sections 603 and 604 do not apply. This certification is based on the fact that the change in the large-plan flat-rate premium due date will have no impact on any small plans.

Paperwork Reduction Act

The information requirements under this final rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) (OMB

⁹ See, e.g., DOL's final rule on Prohibited Transaction Exemption Procedures, 76 FR 66637, 66644 (Oct. 27, 2011).

¹⁰ See PBGC 2011 pension insurance data table S-31, <http://www.pbgc.gov/documents/pension-insurance-data-tables-2011.pdf>.

control number 1212-0009; expires October 31, 2015). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The only changes PBGC is making in its premium information collection in connection with this final rule are that PBGC will give notice that estimated flat-rate filings are discontinued for plan years starting in 2014. (PBGC will also notify private-sector premium filing software developers of the change so that it can be reflected in their products.)¹¹

PBGC needs the information in a premium filing to identify the plan for which the premium is paid to PBGC, to verify the amount of the premium, to help PBGC determine the magnitude of its exposure in the event of plan termination, to help PBGC track the creation of new plans and the transfer of plan assets and liabilities among plans, and to keep PBGC's inventory of insured plans up to date. PBGC receives premium filings from about 25,700 respondents each year and estimates that the total annual burden of the collection of information will be about 8,900 hours and \$59,250,000.¹²

List of Subjects in 29 CFR Part 4007

Employee benefit plans, Penalties, Pension insurance, Reporting and recordkeeping requirements.

In consideration of the foregoing, PBGC amends 29 CFR part 4007 as follows:

¹¹ The more comprehensive changes to PBGC's premium information collection arising from the separate final rule that PBGC anticipates issuing — dealing with aspects of the July 23 proposal other than the large-plan flat-rate premium due date — will be addressed in that separate final rule.

¹² This burden estimate reflects both a decrease in burden attributable to the change in the large-plan flat-rate premium due date under this final rule and an increase in burden attributable to a re-estimate of the existing premium filing burden. The increase in burden due to re-estimation is about 31,300 hours, and the decrease due to the due date change is about 17,000 hours, a net increase of about 14,300 hours from the currently approved burden (about 163,600). PBGC assumes that about 95 percent of the work is contracted out at \$350 per hour, so the 17,000-hour decrease attributable to the final rule is equivalent to about 850 hours of in-house labor and about \$5,650,000 of contractor costs.

PART 4007 — PAYMENT OF PREMIUMS

- 1. The authority citation for part 4007 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1303(A), 1306, 1307.

§ 4007.8 [Amended.]

- 2. In § 4007.8, paragraphs (f), (g), (h), and (i) are removed and reserved.

§ 4007.11 [Amended.]

- 3. In § 4007.11:
 - a. Paragraph (a) introductory text is amended by removing the words “due dates for large plans are prescribed” and adding in their place the words “due date for large plans is prescribed”.
 - b. Paragraphs (a)(3)(i) and (iii) are removed and reserved.
 - c. Paragraph (a)(3)(ii) is amended by removing the words “for the variable-rate premium required by § 4006.3(b) of this chapter for single-employer plans”.

Issued in Washington, D.C., this 20 day of December 2013.

Joshua Gotbaum
Director
Pension Benefit Guaranty Corporation

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